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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWTIUSA	3888

270 7590 04/17/2006

HOWSON AND HOWSON  
SUITE 210  
501 OFFICE CENTER DRIVE  
FT WASHINGTON, PA 19034

EXAMINER
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PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 09/381,385	<b>Applicant(s)</b> ASHMAN ET AL.	
	<b>Examiner</b> Marc A. Patterson	<b>Art Unit</b> 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 30 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: none.  
 Claim(s) objected to: none.  
 Claim(s) rejected: 1,5,6,12,15-21,23-28,30-33,35,37 and 39.  
 Claim(s) withdrawn from consideration: none.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
 13. ☒ Other: See attached.

**ADVISORY ACTION**

*Applicant's arguments filed March 30, 2006 have been fully considered but have not been found to be persuasive.*

1. Applicant argues, on page 3 of the remarks, that Kasai discloses that ethylene vinyl alcohol is an undesirable material for use as an oxygen barrier in a retort container.

However, Kasai does not use the term 'undesirable'; Kasai discloses that oxygen barrier materials are well known, and that a retort container is therefore functional when it has an ethylene vinyl alcohol barrier, but that polyvinylidene chloride does not lose as much of its oxygen barrier in retort; furthermore, ethylene vinyl alcohol is not the barrier layer of the rejection.

Applicant also argues, on page 4, that in contrast to retort containers, Gibbons et al disclose a paperboard container.

However, both containers are food containers, and a retort container is not claimed. Applicant also argues, on page 4, Gibbons et al teach that ethylene vinyl alcohol and polyvinylidene chloride are different.

However, as stated on page 2 of the previous Action, Gibbons et al teach the interchangeable use of ethylene vinyl alcohol and polyvinylidene chloride as barrier materials.

Applicant also argues, on page 4, that Gibbons et al do not teach the interchangeability of ethylene vinyl alcohol and polyvinylidene chloride as barrier materials.

However, as stated above, the interchangeability of ethylene vinyl alcohol and polyvinylidene chloride as barrier materials is taught by Gibbons et al; furthermore, Gibbons et

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al is not used in the rejection for a teaching of interchangeability of ethylene vinyl alcohol and polyvinylidene chloride.

Applicant also argues, on page 5, that Kasai cannot be combined with Gibbons et al because Kasai discloses that ethylene vinyl alcohol has oxygen gas permeability of unacceptable levels.

However, Kasai does not use the term 'unacceptable'; as stated above, Kasai discloses that oxygen barrier materials are well known, and that a retort container is therefore functional when it has an ethylene vinyl alcohol barrier.

Applicant also argues, on page 5, that Kasai discloses a container that has vapor properties that are not lowered when the material undergoes a retort treatment, and that Gibbons would destroy the function of Kasai.

However, as stated above, ethylene vinyl alcohol is not the barrier layer of the rejection.

Applicant also argues, on page 6, that there is no suggestion that the polyvinylidene chloride of Kasai could be replaced with any material, and that polyvinylidene chloride is not interchangeable with nylon.

However, as stated on page 2 of the previous Action, Gibbons teaches the interchangeability of polyvinylidene chloride and nylon, therefore providing a suggestion that the polyvinylidene chloride of Kasai can be replaced.

Applicant also argues, on page 6, that Gibbons et al teach that polyvinylidene chloride should not be used by itself as an oxygen barrier.

However, Gibbons et al teach that when polyvinylidene chloride is used as a barrier layer, it is used interchangeably with nylon.

Applicant also argues on page 6 that Kasai and Gibbons et al are directed to different types of packages, and that the rejection is the result of hindsight.

However, as stated above, both containers are food containers; the rejection is therefore not the result of hindsight.

Applicant also argues, on page 7, that Kasai does not disclose the selection of the amount of talc depending on the desired impact resistance, and that there is no motivation to decrease the claimed amount of talc.

However, Kasai discloses the impact resistance of the blend, and therefore discloses an amount sufficient to obtain the desired thermal resistance; motivation is therefore provided to increase or decrease the amount of filler, as desired, in the absence of an unexpected result or critical advantage obtained from the claimed amount of filler.

Applicant also argues, on page 8, that the requirement of three references is an indication of hindsight.

However, it is unclear why the requirement of three references is an indication of hindsight.

Applicant also argues, on page 9, that Kasai discloses a non – filled layer, rather than a filled layer, having a thickness of 50 microns.

However, Kasai does not disclose that the layer is non – filled.

Applicant also argues, on page 10, that Kasai does not disclose a heat – sealable plastic film comprising a filled layer.

However, as stated on page 5 of the previous Action, Kasai discloses a heat – sealable plastic film comprising polypropylene, and therefore discloses a heat – sealable film comprising filled polypropylene.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Marc Patterson* 4/13/06  
Marc A. Patterson, PhD.  
Primary Examiner  
Art Unit 1772